

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**G.H., Appellant**

**and**

**DEPARTMENT OF THE AIR FORCE, TINKER  
AIR FORCE BASE, OK, Employer**

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**Docket No. 10-1170  
Issued: December 20, 2010**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 24, 2010 appellant filed a timely appeal from an October 16, 2009 schedule award decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit of this case.

**ISSUE**

The issue is whether appellant has more than 11 percent permanent hearing loss of the left ear.

**FACTUAL HISTORY**

On February 12, 2009 appellant, then a 59-year-old machinist supervisor, filed an occupational disease claim alleging that he sustained binaural hearing loss and tinnitus due to working in a noisy environment. He first became aware of his condition on December 4, 1991 but did not immediately file a claim because he was waiting to retire.<sup>1</sup>

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<sup>1</sup> Appellant retired on May 31, 2009.

Appellant submitted with his claim numerous employing establishment audiograms and other medical care records for the period October 2, 1981 to March 3, 2007. A May 19, 2009 statement of accepted facts acknowledged that he used earplugs and was exposed to work-related noise for over 15 years.

In a May 27, 2009 letter, the Office referred appellant for a second opinion to Dr. Richard B. Dawson, a Board-certified otolaryngologist.

In a report dated June 22, 2009, Dr. Dawson commented that appellant worked at the employing establishment since 1981, wore ear protection at all times and was exposed to loud machinery noise at least eight hours a day for 28 years. Appellant first noticed his hearing loss in 1991, which progressively worsened, particularly in the left ear. He also stated that he had a ruptured eardrum and an ear infection in 1973 or 1974 and constant binaural tinnitus since 1969. Dr. Dawson examined appellant and observed a small amount of tympanosclerosis in the right eardrum. An audiogram performed for him on June 22, 2009 showed the following decibel (dBA) losses at frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz): 30, 15, 15 and 15 dBA for the right ear and 25, 20, 25 and 60 dBA for the left ear. Dr. Dawson compared these results with appellant's December 15, 1981 audiogram and noted sensorineural hearing loss in excess of what was normally attributed to presbycusis. He further noted that appellant's account of workplace noise exposure "was sufficient as to intensity and duration to have caused the loss in question." Dr. Dawson diagnosed bilateral high tone sensorineural hearing loss with low tone loss in the right ear, opined that the injury was caused by hazardous noise exposure at appellant's workplace and recommended binaural hearing aids. He did not indicate that tinnitus impacted appellant's ability to perform daily living activities. Using the June 22, 2009 audiometric findings, Dr. Dawson calculated appellant's pure tone averages (PTA) to be 19 dBA for the right ear and 33 dBA for the left ear, reduced each figure by 25 dBA to equal 0 dBA and 8 dBA, respectively and multiplied each figure by a factor of 1.5 to arrive at 0 percent monaural impairment of the right ear and 12 percent monaural impairment of the left ear.<sup>2</sup>

By decision dated August 12, 2009, the Office accepted appellant's claim for binaural hearing loss.

On August 20, 2009 an Office medical adviser found that Dr. Dawson's report and appellant's audiogram complied with the Office's criteria and agreed that appellant's sensorineural hearing loss was caused by occupational noise exposure. The medical adviser also noted that Dr. Dawson prescribed hearing aids. Using the June 22, 2009 audiometric findings results, the medical adviser determined that appellant's PTA were 18.75 dBA for the right ear and 32.5 dBA for the left ear, subtracted each number by 25 dBA to equal 0 dBA and 7.5 dBA, respectively and multiplied each number by 1.5 to arrive at 0 percent monaural impairment of the right ear and 11.3 percent monaural impairment of the left ear. The medical adviser listed June 22, 2009, the date of Dr. Dawson's examination, as the date of maximum medical improvement.

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<sup>2</sup> The Board notes that in calculating impairment Dr. Dawson rounded appellant's PTA from 18.75 to 19 dBA for the right ear and from 32.5 to 33 dBA for the left ear.

In a September 3, 2009 letter, the Office notified appellant that he was entitled to a schedule award of compensation for his hearing loss, but must first file a claim. On September 15, 2009 appellant filed a claim requesting a schedule award.

By decision dated October 16, 2009, the Office granted appellant a schedule award for 11 percent monaural hearing loss of the left ear for the period June 22 to August 1, 2009.<sup>3</sup>

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>4</sup> and its implementing regulations<sup>5</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss of or loss of use of scheduled members or functions of the body. An employee is entitled to a maximum award of 52 weeks of compensation for complete loss of hearing of one ear and 200 weeks of compensation for complete loss of hearing of both ears.<sup>6</sup> However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*)<sup>7</sup> has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>8</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*. Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged. Then, the "fence" of 25 dBA is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBA result in no impairment in the ability to hear everyday speech under everyday conditions. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss: the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss. The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.<sup>9</sup>

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<sup>3</sup> The record also shows that the Office also authorized hearing aids.

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> 5 U.S.C. § 8107(c)(13).

<sup>7</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008).

<sup>8</sup> *Supra* note 5. See also *Mark A. Holloway*, 55 ECAB 321, 325 (2004).

<sup>9</sup> *J.H.*, 60 ECAB \_\_\_\_ (Docket No. 08-2432, issued June 15, 2009); *J.B.*, 60 ECAB \_\_\_\_ (Docket No. 08-1735, issued January 27, 2009).

It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the accepted employment injury. The Board has explained that maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further. The determination of whether maximum medical improvement has been reached is based on the probative medical evidence of record and is usually considered to be the date of the evaluation by the attending physician, which is accepted as definitive by the Office.<sup>10</sup>

### ANALYSIS

Appellant filed a claim for hearing loss and the Office developed the matter by referring him to Dr. Dawson. On June 22, 2009 Dr. Dawson had an audiogram performed on his behalf, conducted a physical examination, found that appellant's hearing loss was due to noise exposure encountered in his workplace and recommended amplification for both ears.

The Office medical adviser reviewed Dr. Dawson's report and applied the Office's standard procedures to the June 22, 2009 audiogram performed for Dr. Dawson. The medical adviser assessed appellant's hearing loss in his right ear at 500, 1,000, 2,000 and 3,000 Hz and recorded losses of 30, 15, 15 and 15 dBA, respectively. The total loss was 75 dBA. When divided by 4, the result was an average hearing loss of 18.75 dBA. The average hearing of 18.75 dBA was reduced by the fence of 25 dBA to equal 0 dBA. This figure was then multiplied by the established factor of 1.5, yielding 0 percent monaural impairment of the right ear. The medical adviser also assessed appellant's hearing loss in his left ear at 500, 1,000, 2,000 and 3,000 Hz and recorded losses of 25, 20, 25 and 60 dBA, respectively. The total loss was 130 dBA. When divided by 4, the result was an average hearing loss of 32.5 dBA. The average hearing of 32.5 dBA was reduced by the fence of 25 dBA to equal 7.5 dBA, which when multiplied by the established factor of 1.5, resulted in 11.25 monaural impairment of the left ear. This percentage was properly rounded to 11 percent by the Office.<sup>11</sup>

The Board notes that Dr. Dawson calculated 12 percent monaural impairment of the left ear based on findings from the June 22, 2009 audiogram. The difference between the two calculations is that Dr. Dawson rounded appellant's PTA from 32.5 to 33 dBA for the left ear before multiplying it by the established factor of 1.5. Office procedures advise that, in computing hearing loss, rounding should be held off until the final percent for award purposes is obtained.<sup>12</sup> Had Dr. Dawson refrained from rounding until the end, his final calculations would have been identical to those made by the Office medical adviser, as detailed above.

Consequently, the evidence of record does not establish that appellant has greater than 11 percent monaural loss of hearing.

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<sup>10</sup> *Holloway*, *supra* note 8 at 325.

<sup>11</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(b) (January 2010).

<sup>12</sup> See *id.* at Chapter 3.700.4(b)(2) (January 2010).

Appellant argues on appeal that his permanent, long-term hearing loss was caused by his work environment around December 4, 1991 and he should have received a schedule award for the period December 4, 1991 to “the rest of my life.” When loss of use of a scheduled member or function of the body is less than 100 percent, the amount of compensation paid is in proportion to the percentage of loss of use.<sup>13</sup> Under the Act, the maximum award for monaural hearing loss is 52 weeks of compensation. Since appellant’s loss was 11 percent, he was entitled to 11 percent of 52 weeks of compensation, which amounted to 5.72 weeks or approximately 40 days of compensation. His schedule award ran from June 22 through August 1, 2009, which equates to 40 days. The Office, therefore, properly determined the number of weeks of compensation for which appellant is entitled. Regarding the time at which the schedule award begins to run, it is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the employment injury. The determination of whether maximum medical improvement has been reached is based on the medical evidence of record. The date is usually the date of the medical examination which determined the extent of the impairment.<sup>14</sup> Here, the date of the examination on which the schedule award was based is Dr. Dawson’s June 22, 2009 examination. The Board has noted that factors such as employability or limitations on daily activities have no bearing on the calculation of a schedule award.<sup>15</sup> The Board finds that the Office paid appellant’s compensation for the appropriate time period. Appellant also questions who will pay for maintaining his hearing aids. The Board notes that he remains entitled to appropriate medical benefits from the Office for his accepted hearing loss.

### **CONCLUSION**

The Board finds that appellant has failed to establish that he has more than 11 percent monaural hearing loss of the left ear.

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<sup>13</sup> 5 U.S.C. § 8107(c)(19).

<sup>14</sup> See also *P.C.*, 58 ECAB 539 (2007); see *Richard Larry Enders*, 48 ECAB 184 (1996).

<sup>15</sup> *Kimberly M. Held*, 56 ECAB 670 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 16, 2009 schedule award decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 20, 2010  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board